



Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

Number: 2025.08.229

Issue Date: June 30, 2005

Refunds of over collected retail sales tax

Washington Administrative Code 458-20-229 provides that a seller who has over collected retail sales tax from its customer may obtain a refund or credit from the Department. But, in order to establish entitlement to a refund or credit for over collected retail sales tax, the seller must provide evidence that the customer has been issued a refund or credit in the amount of the over collected tax, plus applicable interest, if any. Acceptable evidence of customer refund or credit includes a cancelled check made payable to the customer or a credit memo issued to the customer with a corresponding entry on the seller's books reflecting a credit due to the customer. Other types of evidence should be evaluated by the auditor on a case-by-case basis.

In *GTE v. Department of Revenue*, 49 Wn. App. 532, 535 (1987), the Washington Court of Appeals held that a seller holds any refund of over collected sales tax as a trustee on behalf of its customer. Therefore, refunds or credits of retail sales tax due for over collected tax will be paid by the Department to the seller in trust for the benefit of the customer. Because the seller stands in a trustee relationship to its customer, the Department will not issue a refund or credit of overpaid sales tax to a seller in excess of the amount the seller actually refunds or credits to the customer.

The Department should not offset over collected retail sales tax against a seller's sales tax liability without first determining whether the seller has refunded or credited the overpaid sales tax to its customers. When determining the tax liability of a seller who has refunded over collected sales tax, credits for over collected tax should be reflected on the schedules in the period during which the refund or credit was actually made to the customer. If, during an examination, it is discovered that over collected sales tax has not been refunded to a customer, the examiner should inform the seller that a refund will be paid upon presentation of satisfactory evidence that the tax and applicable interest have been refunded to the customer.

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